

## **TITLE 22**

### **EMERGENCY REGULATIONS**

#### **Restoration of Universal Waste Rule Enforcement Authority**

**Department Reference Number: R-02-08**

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#### **FINDING OF EMERGENCY**

Pursuant to section 11346.1 of the Government Code, the Department of Toxic Substances Control (DTSC) finds that adoption of these regulations is necessary for the immediate preservation of the public health and safety and general welfare.

#### **AUTHORITY AND REFERENCE**

These regulations are being proposed under the following authorities:

Health and Safety Code section 25150. This section grants DTSC authority to adopt standards dealing with the management of hazardous waste.

Health and Safety Code section 58012. This section grants DTSC authority to adopt regulations.

These regulations implement, interpret, or make specific the following:

Health and Safety Code section 25150. This section orders DTSC to adopt standards dealing with the management of hazardous waste.

Health and Safety Code sections 25180 to 25196. These sections establish DTSC authorities to enforce the provisions of the Hazardous Waste Control Law.

#### **INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW**

##### **Existing Law**

Current State law requires that persons handling universal waste comply with stated regulatory requirements. However, persons handling universal waste are exempted by Cal. Code Regs., title 22, section 66261.9, from compliance with both the general hazardous waste control regulations and chapter 6.5 of division 20 of the California Health and Safety Code.

Chapter 6.5 of the California Health and Safety Code contains, among other provisions, standards and authorities for both criminal and civil enforcement of the hazardous waste control law. Putatively, these enforcement authorities may not apply to management of universal waste given the exemption in section 66261.9.

DTSC is given broad powers to require compliance with both statutory and regulatory standards for other hazardous wastes under article 8 of chapter 6.5 of division 20 of the California Health and Safety (commencing with section 25180) (referred to as “article 8” in this document). These powers allow civil and criminal enforcement and allow DTSC or the Certified Unified Program Agencies (CUPAs) to quarantine hazardous wastes, enjoin illegal practices, and assess sufficient penalties to preclude further violations.

Health and Safety Code section 25404 et seq. creates the CUPA program which delegates implementation of specified California environmental programs to local agencies that have been designated, by the Secretary for Environmental Protection, as “Certified Unified Program Agencies.” These agencies are given the authority to enforce chapter 6.5 as the hazardous waste management standards apply to generators of hazardous waste. CUPAs enforce the hazardous waste statutes and regulations using the enforcement authority of article 8.

Chapter 23 of the title 22 hazardous waste control regulations (“chapter 23”) establishes a separate set of management standards for certain wastes designated as “universal wastes.” In the general waste identification and classification regulations of chapter 11 (Cal. Code of Regulations, tit. 22, sec. 66261.9), universal wastes are exempted from the general hazardous waste control statutes in chapter 6.5 of division 20 of the Health and Safety Code and the general hazardous waste control regulations. Universal wastes are regulated solely under chapter 23 of the hazardous waste control regulations.

### **Policy Statement Overview**

**Broad Objectives:** To protect the people and the environment of the State of California against threats posed by universal wastes that pose a hazard.

**Specific Objectives:** To allow DTSC and the CUPAs to use the article 8 enforcement authorities to prevent mismanagement of universal wastes.

### **Proposed Regulations**

This rulemaking corrects an overly broad reference in California Code of Regulations, title 22, section 66261.9. The existing reference may mistakenly remove the authority of DTSC and local agencies to enforce the requirements for managing certain hazardous wastes called “universal wastes,” including waste fluorescent tubes, batteries, and

thermostats containing mercury. This project will correct the reference to state that persons managing universal waste are exempt from all of the requirements of chapter 6.5 of division 20 of the California Health and Safety Code except for article 8. Article 8 sets forth the authority of DTSC to carry out civil and administrative enforcement and other actions to protect human health and the environment from mismanagement of hazardous wastes.

## **STATEMENT OF FACTS SUPPORTING FINDING OF EMERGENCY**

DTSC finds this emergency rulemaking necessary because there is currently only limited Statewide authority for DTSC and the CUPAs to enforce the Universal Waste Rule (UWR). With the enforcement authorities of article 8 arguably inapplicable to universal waste management, DTSC or the CUPAs cannot enforce against violations of the chapter 23 standards, but must demonstrate that a universal waste has been disposed at an unauthorized point before enforcement action can be taken. Action can then be taken because disposal facilities are not solely addressed by the Universal Waste Rule, but remain subject to the general hazardous waste control standards.

The Hazardous Waste Control Law, chapter 6.5 of division 20 of the Health and Safety Code and its implementing regulations in title 22, California Code of Regulations, division 4.5, consist of statutes and regulations intended to prevent ultimate mismanagement of hazardous waste with the primary focus being preventing disposal at unauthorized locations. Such disposal can directly affect humans and the environment by direct contact with the wastes or it can pollute ground or surface waters. Note that one of the major hazardous constituents in universal wastes is mercury that must be carefully recycled to prevent vaporization and deposition that leads to surface water pollution.

Currently, it is not clear that there is authority to order proper management of universal wastes or to enforce universal waste management standards until the waste has already been disposed or has been abandoned to the point where that abandonment constitutes disposal. There is no enforcement authority to ensure that the protective environmental standards established in chapter 23 such as immediate cleanup of released universal wastes, accumulation time limits, proper labeling, safe packaging, and employee training, among other standards, are followed. In other words, the hazardous waste or hazardous constituents must be released to the environment before DTSC or the CUPAs can take enforcement action. The general enforcement authorities must be re-established to ensure that mismanagement can be prevented prior to release of universal waste to the environment with its concomitant threats to human and environmental health.

## **CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) COMPLIANCE**

DTSC has found this rulemaking project to be exempt under CEQA. A draft of the Notice of Exemption (NOE) is available for review with the rulemaking file and the NOE will be filed with the State Clearinghouse when the regulations are adopted.

### **FISCAL IMPACT ESTIMATES:**

**Mandates on Local Agencies and School Districts:** DTSC has made a preliminary determination that adoption of these regulations will create no new local mandates.

**Estimate of Potential Cost or Savings to Local Agencies Subject to Reimbursement:** DTSC has made a preliminary determination that adoption of these regulations will not impose a local mandate or result in costs subject to reimbursement pursuant to part 7 of division 4, commencing with section 17500, of the Government Code or other nondiscretionary costs or savings to local agencies. Note that there are theoretically costs to local agencies associated with enforcement of the hazardous waste control regulations and statutes and additional revenues through penalties. However, all of the costs and revenues were analyzed in the Universal Waste Rule final rule. The correction in this regulation makes the original fiscal estimates in the Universal Waste Rule final rule accurate. Other estimates of impacts will not change because this package does not change the other regulatory standards of the Universal Waste Rule.

Health and Safety Code section 25404.3 allows CUPAs to assess fees to cover the necessary and reasonable costs of implementing the requirements. Local agencies are expected to recover their costs of enforcement in any fines and/or settlements for mismanagement of universal waste.

**Cost or Savings to Any State Agency:** DTSC has made a preliminary determination that the proposed regulations will result in a small and speculative increase in its revenues. Note that there are theoretically costs to DTSC associated with enforcement of the hazardous waste control regulations and statutes and additional revenues through penalties. However, all of the costs and revenues were analyzed in the Universal Waste Rule final rule. The correction in this regulation makes the original fiscal estimates in the Universal Waste Rule final rule accurate. Other estimates of impacts will not change because this package does not change the other regulatory standards of the Universal Waste Rule.

These regulations will reinstate DTSC's ability to initiate and complete enforcement actions against persons mismanaging universal waste. DTSC recovers the costs of enforcement and assesses penalties to the businesses or individuals charged with mismanagement of universal waste as part of any settlement agreement or penalty.

Thus, there may be a small increase in revenue from cost recovery actions and penalty assessments.

**Cost or Savings in Federal Funding to the State:** DTSC has made a preliminary determination that the proposed regulations are necessary to continue federal funding of at least the Universal Waste Rule (UWR) portion of the State's authorized Resource Conservation and Recovery Act (RCRA) hazardous waste control program.